



Decision and Reasons for Decision

Application Number: 210055

Applicant: Nicholas Scott

Respondent: Queensland Corrective Services

Decision Date: 30 July 2007

Catchwords: **FREEDOM OF INFORMATION - sufficiency of search - documents relating to incidents and breaches - compliance with reporting procedures**

Contents

Background	2
Steps taken in the external review process	2
Matter in issue	5
Findings.....	5
Conclusion.....	10
Decision	10

Reasons for Decision

Background

1. By letter dated 6 March 2006, the applicant applied to Queensland Corrective Services (QCS) for access to the following:
 - all documents and reports from his medical file from 5 August 2005 to 8 March 2006 (date QCS received his initial freedom of information (FOI) application) (Item 1)
 - all video recordings of major breaches from 6 July 2005 to 8 March 2006 (Item 2)
 - all documents relating to all breaches and incidents from 6 July 2005 to 8 March 2006 (Item 3).
2. By letter dated 21 March 2006, QCS informed the applicant that it was currently processing a number of applications under the *Freedom of Information Act 1992* (Qld) (FOI Act) and therefore, there may be some difficulty in providing him with a decision within the timeframe required under the FOI Act.
3. By letter dated 6 July 2006, Ms V Young, Acting Senior FOI & Privacy Officer, QCS, informed the applicant of her decision to:
 - grant full access to 40 pages and partial access to two pages (incident reports) in response to Items 1 and 3 of the applicant's initial FOI application
 - exempt matter contained in the two pages of incident reports pursuant to section 44(1) of the FOI Act
 - grant full access to breach hearing recordings for 1 December 2005, 17 November 2005 and 15 January 2006 in response to Item 2 of the applicant's initial FOI application
4. By letter dated 3 August 2006, the applicant sought internal review of Ms Young's decision in respect of Items 2 and 3. In his internal review application, the applicant:
 - contested the application of section 44(1) of the FOI Act to certain matter that was deleted from the incident reports dated 11 September 2005 and 3 December 2005
 - raised issue with the sufficiency of the searches undertaken by QCS for documents relating to:
 - an incident which occurred on 3 December 2005
 - breaches which occurred on 17 November 2005 and 15 January 2006.
5. Having received no internal review decision from QCS within the timeframe required under the FOI Act, the applicant applied to this Office for external review of QCS' 'deemed affirmation' of Ms Young's initial decision.
6. On 19 September 2006, Mr Cameron Thomas of QCS issued an internal review decision. As this decision was given outside the timeframe required by the FOI Act, it had no effect on the processing of the applicant's external review application.

Steps taken in the external review process

7. By letter dated 13 April 2007, I requested QCS to:

- provide this Office with a copy of the two folios containing matter claimed to be exempt under section 44(1) of the FOI Act
 - conduct further searches for the documents which the applicant contended should exist in relation to the 3 December 2005 incident and 17 November 2005 and 15 January 2006 major breaches
 - inform me whether the reasons set out in Mr Thomas' decision dated 19 September 2006, with respect to the documents in issue and sufficiency of search issues, were to be relied upon by QCS as its submissions in this review.
8. By letter dated 19 April 2007, QCS provided this Office with copies of the two folios containing matter claimed to be exempt under section 44(1) of the FOI Act. In this letter, QCS also informed this Office that it wished to rely upon the reasons set out in Mr Thomas' decision dated 19 September 2006 for the purpose of this review.
9. I have accepted the reasons set out in Mr Thomas' decision as QCS's submissions with respect to the application of section 44(1) of the FOI Act and sufficiency of search issues in this review.
10. On 12 June 2007, a staff member of this Office phoned QCS to advise that I had considered the matter in issue in the incident reports dated 11 September 2005 and 3 December 2005 and had formed the preliminary view that some of this matter did not qualify for exemption under section 44(1) of the FOI Act because it did not concern the personal affairs of other individuals. QCS accepted this preliminary view and agreed to release a revised version of these folios to the applicant disclosing the non-exempt matter.
11. On 13 June 2007, a staff member of this Office obtained from QCS, copies of relevant reporting procedures with respect to breaches and incidents, for the purpose of addressing the sufficiency of search issues raised by the applicant in this review.
12. By letter dated 13 June 2007, I informed the applicant that I had formed a preliminary view that:
- certain matter in the incident reports dated 11 September 2005 and 3 December 2005 did not qualify for exemption under section 44(1) of the FOI Act and would be released to the applicant by QCS
 - the remaining matter in issue in the incident reports dated 11 September 2005 and 3 December 2005 concerned the personal affairs of other individuals and therefore, qualified for exemption under section 44(1) of the FOI Act
 - there were no reasonable grounds to believe that further documents relating to the 3 December 2005 incident and 17 November 2005 and 15 January 2006 breaches were in the possession or under the control of QCS. Additionally, there were no further searches which it would be reasonable to request QCS to undertake in the circumstances of this review.
13. By letter dated 24 June 2007, the applicant responded to the preliminary view and:
- raised sufficiency of search issues with respect to missing progress notes from his medical file for the date range 11 October 2005 to 22 January 2006
 - raised sufficiency of search issues with respect to documents relating to Item 3 of his initial FOI application
 - requested that copies of the following documents be provided to him:
 - breach and incident history from 17 March 2005 to 8 March 2006
 - Offender Management Procedure, Breach of Discipline, version 02

- Incident Management Procedure, Incident Reporting, version 04
- my decision in external review no. 674/05 dated 5 June 2007.

14. By email dated 3 July 2007, I:

- advised QCS that the applicant had contested the preliminary view put to him on 13 June 2007
- requested QCS to provide the applicant with a copy of his breach and incident history from 6 July 2005 to 8 March 2006
- requested QCS undertake further searches for progress notes from the applicant's medical file for the date range 11 October 2005 to 22 January 2006.

15. By letter dated 3 July 2007, I provided the applicant with a copy of:

- my decision in external review no. 674/05
- Offender Management Procedure, Breach of Discipline, version 02.

16. Also in that letter, I advised the applicant that:

- I was unable to provide him with a copy of Incident Management Procedure, Incident Reporting, version 04 because it is not a publicly available document
- the scope of his request in Item 3 of his initial FOI application was limited to documents relating to breaches and incidents between 6 July 2005 to 8 March 2006 and therefore, in this review, he could only seek access to a copy of his breach and incident history for this date range
- QCS had agreed to provide him with a copy of his breach and incident history from 6 July 2005 to 8 March 2006 and therefore, this was no longer in issue in this review
- given that the applicant was silent in response to my preliminary view with respect to the application of section 44(1) of the FOI Act to the incident reports dated 11 September 2005 and 3 December 2005, I had taken this as his acceptance of my preliminary view and therefore, the incident reports were no longer in issue in this review.

I also asked the applicant to confirm that his sufficiency of search issues in respect of Item 3 of his initial FOI application only concerned the 3 December 2005 incident and 17 November 2005 and 15 January 2006 breaches.

17. By letter dated 8 July 2006, the applicant:

- advised that he had received his breach and incident history for 6 July 2005 to 8 March 2006 from QCS but that this document was missing an entry from 2 December 2005
- requested further searches be undertaken for incident reports and the report of Officer B McLaughlin from 2 December 2005
- confirmed that his sufficiency of search issues only concerned the 3 December 2005 incident and 17 November 2005 and 15 January 2006 breaches.

18. On 10 July 2007, QCS informed this Office that it had located additional progress notes from the applicant's medical file for the date range 11 October 2005 to 22 January 2006, that it had no objection to the full release of the documents to the applicant, and would forward them to the applicant.

19. On 12 July 2007, this Office received a copy of the additional progress notes located by QCS.
20. By letter dated 17 July 2007 I advised the applicant that:
- QCS had submitted that his relocation from cell 6, pod 1 of the MSU of AGCC to the detention unit on 2 December 2005 did not appear on his breach and incident history because it was not classified as an incident
 - his request for further searches to be conducted in relation to the 2 December 2005 event had been dealt with and finalised by my decision in external review no. 171/06 and 175/06 (29 May 2007) and would not be dealt with again in this review
 - QCS had located additional progress notes from his medical file for all dates between 11 October 2005 to 22 January 2006 and therefore, these documents and related sufficiency of search issues were no longer in issue in this review.

Matter in issue

21. The matter in issue in this review for my consideration is the sufficiency of the agency's searches for documents relating to the 3 December 2005 incident and the 17 November 2005 and 15 January 2006 major breaches of discipline.

Findings

Sufficiency of search

22. Table 1 sets out the documents that have been provided to the applicant by QCS in relation to the 3 December 2005 incident and 17 November 2005 and 15 January 2006 major breaches of discipline:

Table 1		
Date	Event	Documents released by QCS
17 November 2005	Major breach	IOMS printout of breach details Report of CSO Weaver Form 23
3 December 2005	Incident	IOMS printout of incident report
15 January 2006	Major breach	IOMS printout of breach details Breach preamble Report of CSO Potaka Form 23

23. For the purpose of this decision, it is relevant to note that a 'breach' is an event relating to a prisoner's behaviour, eg. disobeying a direction of a corrective services officer, whereas an 'incident' describes an event which concerns a prisoner, but does not necessarily relate to their behaviour, eg. a visitor returns a positive scan for banned substances.
24. In his application for internal review dated 3 August 2006, the applicant contended that, in relation to an incident which occurred on 3 December 2005, the following further documents should exist:

- custodial incident reports
- reports of all officers involved
- all investigations required
- any other documents.

25. The applicant also contended that the types of documents sought in respect of the 3 December 2005 incident should also exist in relation to an incident, which the applicant submitted, occurred on 17 November 2005. During the course of this review, QCS informed this Office that there was no incident recorded in the Integrated Offender Management System (IOMS) for this date and that the only IOMS record for this date was for a major breach of discipline. Accordingly, I have dealt with this request as a general sufficiency of search request relating to the 17 November 2005 major breach of discipline.
26. With respect to the major breach of discipline which occurred on 15 January 2006, the applicant submits that reports of additional observing officers, namely, Officer Burrows and Officer Walsh, should exist.
27. The decision of Mr Thomas dated 19 September 2006 (which I have accepted as QCS's submissions in this review) stated that no further documents, other than those listed in Table 1 above, can be located in relation to the incident and breaches. With respect to the 17 November 2005 breach, Mr Thomas stated:

There was no investigation conducted of this matter, only a Discipline process conducted in accordance with the Breach of Discipline procedure. There is no information I can see that would suggest any other officer was involved in this matter that would require the production of another report.

28. With respect to the 15 January 2006 breach, Mr Thomas stated:

There was no investigation conducted of this matter, only a Discipline process conducted in accordance with the Breach of Discipline procedure. I have examined [the applicant's] paper file records and the IOMS system which has an inbuilt capacity to store the relevant documents. The IOMS system holds the [documents released to the applicant] and no other officer report exists.

29. With respect the 3 December 2005 incident, Mr Thomas stated:

The Incident Report details the action taken and I am of the view that the procedure does not require an investigation to be conducted as ... indicated [by the applicant]. I am also of the view that in relation to the process there is no evidence to suggest that any other reports from officers involved would be required.

I have examined the contact this office has had with the Maximum Security Unit of the Arthur Gorrie Correctional Centre and I am satisfied that in terms of the issues [the applicant has] raised as part of this review, the relevant documentation has been located and considered.

30. By letter dated 13 April 2007, I requested QCS to undertake further searches for additional documents relating to the 3 December 2005 incident and the 17 November 2005 and 15 January 2006 major breaches of discipline. By letter dated 19 April 2007, QCS informed this Office that further searches were conducted by staff at the MSU of AGCC of the applicant's paper and IOMS records but that no additional documents could be located. QCS also relied upon the explanations provided by

Mr Thomas in his letter dated 19 September 2006 for the absence of further documents.

31. Essentially, QCS's position in relation to further documents relating to the 3 December 2005 incident and 17 November 2005 and 15 January 2006 major breaches of discipline, as I understand it, is that no further documents are in its possession or under its control. I consider that this situation requires consideration of the sufficiency of the agency's searches. In such matters, the questions that must be addressed are:

- whether there are reasonable grounds to believe that the requested documents exist and are documents of the agency as that term is defined in section 7 of the FOI Act, and if so
- whether the search efforts made by the agency to locate such documents have been reasonable in all the circumstances of the particular case (see *Shepherd and Department of Housing, Local Government and Planning* (1994) 1 QAR 464, at paragraphs 18-19).

32. In answering these questions, I have had reference to the Offender Management Procedure (OMP) that was in force at the time of the breaches of discipline, namely *Breach of Discipline OMP* (version 02) and the Incident Management Procedure (IMP) that was in force at the time of the incident, namely, *Incident Reporting IMP* (version 04).

Breach of Discipline OMP

33. Sections 2.6 and 2.8 of *Breach of Discipline OMP* (version 02) set out the documentation requirements relating to breaches of discipline as follows:

2.6 Documentation

The observing officer must complete the Breach of Discipline Form 23 and provide a full and comprehensive report of events in sequence. The report must be attached to the breach form. Supporting statements from other officers observing the breach may be attached.

On completion of the breach determination process and where applicable, details of the breach are to be entered on current offender management system and the Disciplinary Breach Register.

...

A hard copy of the Breach of Discipline Form and any supporting documentation/reports must be forwarded to sentence management for inclusion on the prisoner's detention file.

...

2.8 Determination

...

The deciding officer must determine the breach and complete Determination Question Sheet.

...

34. In my decision in external review no. 674/05 (5 June 2007), I examined similar reporting requirements in the context of *Breach of Discipline OMP* (version 01). In that

decision, I found that the relevant OMP required only *'the observing officer'*, that is, only one officer, to complete the documentation and that reports or statements of any other officers who observed the breach *'may be attached'*.

35. Given that the wording of *Breach of Discipline* OMP (version 02) is the same as that in version 01, I am satisfied that only one officer was required to complete the form and produce a report, ie. the officer nominated as the *'observing officer'* and preparation of additional reports and statements is discretionary, not mandatory.
36. I note that the term *'observing officer'* is not defined in the *Breach of Discipline* OMP or any of the appendices to this procedure. Accordingly, I have taken this term to simply mean an officer who observes a breach of discipline.
37. Accordingly, I find that preparation of reports by CSO Weaver and CSO Potaka in relation to the 17 November 2005 and 15 January 2006 breaches, respectively, satisfies the reporting requirements set out in *Breach of Discipline* OMP (version 02) and that no other officers were required to produce reports.
38. Although I consider that the *Breach of Discipline* OMP (version 02) does not provide reasonable grounds to believe that every officer observing a breach must generate a report, I am satisfied that this OMP provides reasonable grounds to believe that the following documents should exist in relation to each breach:
 - breach of discipline Form 23
 - one officer report
 - printout from the relevant offender management system (IOMS)
 - Determination Question Sheet (DQ Sheet)
39. As set out in Table 1 above, a Form 23, officer report and printout from IOMS have been released to the applicant by QCS in relation to the 17 November 2005 and 15 January 2006 breaches. The production of these documents accords with the requirements of *Breach of Discipline* OMP (version 02). However, QCS was not able to locate a DQ Sheet for either of these breaches.
40. I note that QCS, in a previous review concerning the applicant and the issue of sufficiency of search for various DQ Sheets (external review no. 674/05), submitted that:

The normal practice for when a corrective service facility released their original offender files to [Q]CS Central Office or an external agency (ie courts, law enforcement etc) is that dummy (copy) files are created before the originals are released.

What normally occurs when original files are away from their normal storage area is that the newer documents created that relate to the current management of the offender are maintained within the dummy files until they can be reintegrated back into the original files upon their return.

What can occur as a result, from my experience, is that newer original documents get mixed up with copies on the dummy files and never properly get reintegrated back into the original files.
41. In his submissions dated 24 June 2007, the applicant did not raise any specific arguments to support his contention that further documents should exist in relation to these breaches.

42. Based upon the explanation given by QCS in a previous review, as set out above, the searches and inquiries conducted by QCS in processing this FOI application and in the course of this review, and the terms of the *Breach of Discipline* OMP, I am satisfied that:
- preparation of reports by CSO Weaver and CSO Potaka in relation to the 17 November 2005 and 15 January 2006 breaches, respectively, satisfies the reporting requirements set out in *Breach of Discipline* OMP (version 02)
 - no other officers were required to produce reports regarding the 17 November 2005 and 15 January 2006 breaches and therefore, there are no reasonable grounds to believe that further reports are in the possession or under the control of QCS
 - there are no reasonable grounds to believe that the DQ Sheets for the 17 November 2005 and 15 January 2006 breaches are in the possession or under the control of QCS
 - the searches and inquiries conducted by QCS have been reasonable in the circumstances of this review.

Incident Reporting IMP

43. At the time of the 3 December 2005 incident, the *Incident Reporting IMP* (version 04) was in force. That procedure requires all incidents to be recorded on QCS' information system (IOMS). The appendices to the procedure further explain the reporting requirements with respect to incidents. The appendix titled *Incident Reporting Process* requires the person in charge/regional director to '*ensure completion of incident report as soon as practicable*' after an incident occurs.
44. Where an incident is categorised as **significant** or **critical**, a Ministerial Briefing Note must also be submitted to the relevant operational executive director as soon as is practicable after the incident occurs. The appendix to this procedure titled *Critical and Significant Incidents* lists the type of incidents that fall into these categories. Examples of critical incidents are:
- death of a person in a corrective services facility
 - use of lethal force
 - bomb threat or find
 - discharge of a firearm in a corrective services facility.
45. Examples of significant incidents are:
- sexual assault in a corrective services facility
 - discharge in error
 - prepare to escape
 - withdrawal of prisoner labour.
46. Having examined the types of incidents which fall into these categories and the circumstances surrounding the 3 December 2005 incident, I am satisfied that the 3 December 2005 incident, which involved detection of drugs on one of the applicant's visitors, was neither a significant or critical incident.
47. In his submissions dated 24 June 2007, the applicant did not raise any specific arguments to support his contention that further documents should exist in relation to this incident.

48. Based on my analysis of the terms of the *Incident Reporting IMP* and relevant appendices, I am satisfied that:
- preparation of a Ministerial Briefing Note was not required in relation to the 3 December 2005 incident because it was not a significant or critical incident
 - preparation of the IOMS incident report in relation to the 3 December 2005 incident satisfied all reporting requirements
 - additional documentation, such as reports of observing officers, was not required to be produced in relation to the incident
 - there are no reasonable grounds to believe that further documents relating to the 3 December 2005 incident are in the possession or under the control of QCS
 - the searches and inquiries conducted by QCS have been reasonable in the circumstances of this review.

Conclusion

49. Accordingly, I find that:
- there are no reasonable grounds to believe that further documents relating to the 3 December 2005 incident and 17 November 2005 and 15 January 2006 breaches are in the possession or under the control of QCS
 - the searches undertaken by QCS have been reasonable in the circumstances of this matter.

Decision

50. I affirm the decision under review (being the 'deemed affirmation of Ms Young's decision dated 6 July 2006) by finding that:
- there are no reasonable grounds to believe that any further documents relating to the 3 December 2005 incident and the 17 November 2005 and 15 January 2006 major breaches of discipline are in the possession or under the control of QCS
 - the searches undertaken by QCS for additional documents have been reasonable and there are no further searches which it would be reasonable to request QCS to undertake in the circumstances of this review.
51. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

V Corby
Assistant Commissioner

Date: 30 July 2007